THE HONOUABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.25773 of 1999

Between:

J.Nagaiah **.. PETITIONER**

and

The Cooperative Tribunal, Hyderabad rep. by its Chairman and others

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RESPONDENTS

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ORDER:

This writ petition is filed seeking Certiorari to call for the records on the file of the 2nd respondent in proceedings in Rc.No.784/91.B, dated 12-11-1993, and consequential proceedings issued by the 3rd and 4th respondents in Form Nos.6 and 7, dated 28-05-1999 and 23-10-1999 respectively and quash the same as arbitrary and illegal.

It seems the petitioner worked as Secretary in the Primary Agricultural Cooperative Society, Yendebtla, Nagarkurnool Mandal, Mahabubnagar District, during the years from 1981 to 1986. While so, the 2nd respondent issued a show cause notice stating that the petitioner has misappropriated an amount of Rs.15,850/-. Therefore, he is liable to pay a sum of Rs.15,850/- along with interest of Rs.10,215/- as on the date of issuing the show cause notice. The petitioner submitted a written statement on 13-10-1993 denying all the allegations made in the show cause notice. The 2nd respondent issued the above said show cause notice purported to be on the basis of a report submitted under Section 52 of the Andhra Pradesh Cooperative Societies Act. Thereafter, surcharge proceedings under Section 60 of the A.P.Cooperative Societies Act (for short "the Act") were initiated and the petitioner submitted his explanation for the same denying the allegations and contended that without conducting any further enquiry into the matter, the impugned proceedings are passed.

The learned counsel for the petitioner contends that no enquiry as required under Section 60 of the Act was conducted and without following any procedure, the petitioner was held responsible for misappropriation of the amount mentioned in the impugned order.

Hence, the same is arbitrary, illegal and violative of principles of nature justice and, therefore, liable to be set aside.

The learned Government Pleader filed a counter *inter alia* asserting that though number of opportunities were given to the petitioner, he did not avail the same and, therefore, the impugned order came to be passed.

The statement made by the respondent seems to be not correct. On the very face of the impugned proceedings, it is clear that no detailed enquiry has been conducted after the inspection report under Section 52 of the Act was made available by the subordinates of Deputy Registrar/Divisional Co-operative Officer, Nagarkurnool. In the impugned order, the Deputy Registrar cum Divisional Co-operative Officer, Nagarkurnool, simply copied down the report under Section 52 of the Act and stated that a show cause notice was issued to the petitioner and he submitted an explanation for the same and the Deputy registrar conducted summary enquiry under Section 60 of the Act with reference to inspection report on the available record and found that the petitioner misappropriated the funds of the society to a tune of Rs.26,065/-. Thus, there is no finding recorded by the authority as required under the law. While examining this issue, a Division Bench of this court, in ***CHALLA SANYASINAIDU*** v. ***DEPUTY REGISTRAR OF CO-OP. SOCIETY, SRIKAKULAM***[1], held as under:

> "In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities on the basis of the report of the enquiry officer, he may initiate surcharge proceedings under Section 60. The report may form the basis for the Registrar to proceed under Section 60 and

issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross-examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed. Therefore, we respectfully agree with the view taken by the learned

Judge in *S.Rama Subba Rao v. President, Kaikuluru Irrigation and Power Department Sub Divisional Employees Co-operative Credit Society Limited (supra).* *Even in Mohd.Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others* (supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issurance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same."

Following the above judgment, this writ petition is liable to be allowed.

Accordingly, the writ petition is allowed setting aside the proceeding, dated 12-11-1993. The respondents are directed to conduct a fresh enquiry under Section 60 of the Act and pass surcharge proceedings, after putting the petitioner on notice and after hearing him personally. There shall be no order as to costs.

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13-07-2006

Prv

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[1] 1998 (1) ALD 455 (DB)